IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.08.2007
CORAM

THE HON'BLE MR. JUSTICE S.MANIKUMAR

W.P.No.39847 of 2002 &
W.P.M.P.No.59278 of 2002

I.Shajahan ... Petitioner

Vs.
1. The Regional Transport officer
Coimbatore (South),
Coimbatore.

2. The Motor Vehicles Inspector
K.G.Chawadi Checkpost (incoming)
Coimbatore ... Respondents

Petition filed under Article 226 of the constitution of India to issue a writ of Certiorarified mandamus to call for the records of the first respondent relating to the impugned demand notice in R.No.102752/A3/2002 dated 25.10.2002 to quash the same and to direct the respondents to release the vehicle No.KL-09-J-1117 to the petitioner forthwith.

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For Petitioner ... Mr.S.Govindram
For Respondents ... Mr.M.K.T.Gopu, G.A.

ORDER

The challenge to this Writ Petition is a demand notice dated 25.10.2002 issued by first respondent, wherein the petitioner has been directed to pay the tax of Rs.34,000/-for the month of October 2002, within 7 days from the date of receipt of the notice.

2. It is the case of the petitioner that he is a State-wide Contract Carriage Permit holder issued by the Kerala State Transport Authority, in respect of vehicle No.KL-09-J-1117. The vehicle was under repair and after carrying out the repairs, he took the vehicle for a test drive. When he crossed the State border of Kerala and entered into the State of Tamilnadu, the subordinates of the Motor Vehicles Inspector, K.G.Chawadi Checkpost (incoming), the second respondent herein stopped his vehicle and checked the documents and he replied to the authorities that the vehicle was operated only as a test drive. Thereafter, second respondent issued a check report dated 9.10.2002 alleging that the vehicle is operated with 35 passengers without temporary permit and other records. The vehicle was detained by second respondent on the side of the main road from 9.10.2002. The original copies of the Registration Certificate, Insurance Certificate, Tax Receipt and permit of the vehicle were submitted along with his representation dated 22.10.2002, as contemplated under Section 207(2) of the Motor Vehicles Act, 1988. The first respondent without considering his representation, issued a show cause notice dated 25.10.2002 as to why a sum of Rs.34,000/- should not be collected from him for the month of October 2002. He submitted his reply stating that the

amount demanded is very high and requested them to drop further action. Aggrieved by the impugned order, the petitioner has preferred this Writ Petition for the relief as stated above.

3. Learned counsel for the petitioner submitted that the vehicle was operated only against a test drive and the allegation of the second respondent that the vehicle carried 35 passengers without temporary permit, is contrary to facts. He further submitted that even if there was any violation of the conditions of the permit, the respondents cannot demand tax and only a disciplinary action could be taken for suspension or cancellation of licence. He further submitted that the respondents ought to have forwarded the check report to the permit issuing authority enabling them to take appropriate action.

4. Learned Government Advocate submitted that the respondent is permitted to levy tax for the use of the road within the territory of Tamil Nadu under the Motor Vehicles Taxation Act.

5. Heard the learned counsel appearing for the parties and perused the material available on record.

6. It is evident from the impugned order dated 25.10.2002 that on 9.10.2002, the Motor Vehicles Inspector, K.G.Chawadi Checkpost (incoming), Coimbatore checked the Contract Carriage Omni bus KL 09-J-1117 and detained the vehicle for the following irregularities:
"i) Temprary permit or pucca permit are not available. Hence the vehicle plied without permit to ply in Tamilnadu.
ii) Tax due to Tamilnadu has not been paid.

7. The impugned order reads that show cause notice was issued to the owner of the vehicle, namely Thiru I.Shajahan, S/o.Thiru Ismail, Thampattu House, West Yakkara, Palakkadam, Kerala State and that he is liable to pay a sum of Rs.34,000/- for the month of October 2002 as due to Tamilnadu State. The order further reads that the owner of the vehicle had not denied the charges and contended that a demand notice be issued so as to enable him to approach the Court.

8. Though Motor Vehicles Act, 1988 has contemplated disciplinary action for violation of the conditions of the permit, if the holder of the permit has violated the permit conditions, as per Section 3 of the Tamil Nadu Motor Vehicles Taxation Act, 1974, the State Government can levy tax on every motor used or kept for use in the State of Tamil Nadu. Section 3 of the above Act is extracted:
"3. Levy of tax: (1) Subject to the provisions of sub-section (2) tax shall be levied on every motor vehicle used or kept for use in the State of Tamil Nadu at the rate specified for such vehicle in the First Schedule or in the Second schedule or in the Third Schedule, as the case may be.
(2) The Government may, by notification, from time to time, increase the rate of tax specified in the Schedules:
Provided that such increase, by notification, under the sub-section shall not, in the aggregate, exceed fifty per cent of the rate specified in the First Schedule or in the Second Schedule or in the Third Schedule, as the case may be.
(3) All references made in this Act to the Schedules shall be considered as relating to the Schedules as for the time being amended in exercise of the powers conferred by this Section."

A disciplinary action taken for violation of permit conditions under the Motor Vehicles Act, 1988 is different from levy of Tax under the Taxation Act. The provisions of both the Acts can operate independently and it is not repugnant to each other. Merely because the penal provision is contemplated under the Parent Act, that does not preclude the authorities under the Tamil Nadu Motor Vehicles Taxation Act from levying and collecting tax.
9. Further the contention of the petitioner that the vehicle was operated as a test drive inside the State of Tamilnadu is only a question of fact and the same cannot be agitated in this court by way of

Writ Petition and therefore this Court will not delve into the factual aspect.

10. It is explicit from the impugned order that the owner of the vehicle did not have any permit and it was operated within the State of Tamilnadu on the date of inspection.

11. In view of the above statutory provisions, I do not find any infirmity in the impugned order of the first respondent and the same is sustained. The writ writ petition is dismissed. No costs. The connected M.P.is closed.

13.08.2007

Index:Yes
Website:
ajr

To
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Coimbatore (South),
Coimbatore.

2. The Motor Vehicles Inspector
K.G.Chawadi Checkpost (incoming)
Coimbatore

S.MANIKUMAR,J.
Ajr

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